

MEMO# 31812

June 18, 2019

Texas Enacts Legislation to Eliminate Authority of Teachers Retirement System to Regulate 403(b) Products

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June 18, 2019 TO: ICI Members
Pension Committee

Pension Operations Advisory Committee SUBJECTS: Pension RE: Texas Enacts Legislation to Eliminate Authority of Teachers Retirement System to Regulate 403(b) Products

The Governor of Texas has signed a bill (HB 2820) that will remove regulatory authority over 403(b) plan investment products from the Teachers Retirement System (TRS), effective September 1, 2019.^[1] Previously, the TRS required vendors of 403(b) plan investment products offered to teachers in the state to follow certain registration and certification requirements, including adhering to limits on annual asset-based fees. Prior to enactment of HB 2820, amendments to the TRS administrative rules that were scheduled to become effective October 1, 2019 would have imposed stricter fee caps, prohibited products with sales loads, and increased fees for company certification and product registration.^[2] It appears that the legislation will prevent those administrative rule changes from taking effect, by eliminating the TRS's regulatory authority. The TRS no longer will be able to impose registration and certification requirements on vendors and their products.

Pursuant to the bill, instead of the existing TRS registration and certification requirements, providers of non-annuity custodial accounts generally must offer investments that meet the requirements of section 403(b) and must comply with applicable federal and state law securities requirements.^[3] The bill also amends the applicable statutory requirements for financial institutions offering 403(b) plan services to require "sufficient presence in this state to serve the employees of educational institutions who participate in the plan."^[4] Previously, the statute required financial institutions to have a main office, branch office, or trust office in the state.

The legislation is intended to reflect that 403(b) plan investment options already are regulated at the state level (by the State Securities Board and Texas Department of Insurance) and at the federal level.

Elena Barone Chism

endnotes

[1] The bill text is available here:

<https://capitol.texas.gov/BillLookup/History.aspx?LegSess=86R&Bill=HB2820>. A bill analysis is available here: <https://hro.house.texas.gov/pdf/ba86r/hb2820.pdf#navpanes=0>.

[2] See ICI Memorandum no. 30944, dated November 9, 2017. Available at

https://www.ici.org/my_ici/memorandum/memo30944.

[3] See definition of “qualified investment product” in HB 2820 Section 1.01, amending Section 4, Chapter 22 (S.B. 17), Acts of the 57th Legislature, 3rd Called Session, 1962 (Article 6228a-5 Vernon’s Texas Civil Statutes). The bill also changes the requirements for insurance companies offering 403(b) annuity products. See HB 2820 Section 1.03, amending Section 6, Chapter 22 (S.B. 17), Acts of the 57th Legislature, 3rd Called Session, 1962 (Article 6228a-5 Vernon’s Texas Civil Statutes).

[4] HB 2820 Section 1.05, amending Section 9A, Chapter 22 (S.B. 17), Acts of the 57th Legislature, 3rd Called Session, 1962 (Article 6228a-5 Vernon’s Texas Civil Statutes).